

REMARKS

The Final Action mailed December 16, 2008, has been carefully reviewed. Claims 2-5 remain in the application, which claims were **not** rejected on the basis of any prior art in the Final Action and **are indicated as being directed to allowable subject matter**. Favorable consideration, entry of the amendments presented, and early formal allowance are respectfully urged.

Claims 4 and 5 have been objected to as noted in paragraph 2 on page 2 of the Final Action.

The skirt which is exemplified in the drawings as skirt 19 is now referred to as "the second inner skirt".

Withdrawal of the objection is respectfully requested.

Claims 2-5 have been rejected under the first paragraph of Section 112, but no explanation is given in the Office Action, and the last sentence in the stated rejection is incomplete. The rejection is therefore respectfully traversed.

During a telephone conference between undersigned (on behalf of applicant) and examiner Hylton on March 5, 2009, examiner Hylton explained, as understood by undersigned, that

this rejection was intended to relate to the recitation in claim 5 of how the solid projection as part of the container is "fixed to and extending up from" the horizontal wall when the horizontal wall is not set forth as part of the container (this criticism of the claim language is repeated in the rejection under the second paragraph of Section 112, appearing as the last sentence on page 2 of the Final Action).

Applicant does not agree that the horizontal wall was not claimed as part of the container, and applicant does not see how there can possibly be any failure under the written description requirement of the first paragraph of Section 112 when the subject matter in question is clearly illustrated in the drawings, including Figs. 1 and 2, where the horizontal wall (17) is clearly illustrated with the solid projection (12) extending upwardly therefrom. There is no failure under the written description requirement of the first paragraph of Section 112.

Withdrawal of the rejection is in order and is respectfully requested.

Claims 2-5 have been rejected also under the second paragraph of Section 112. This rejection is respectfully traversed.

Applicant believes and respectfully submits that the claims as previously drafted, especially when considered in light of applicant's specification (fully consistent with the law), would not have been confusing to those skilled in the art, and therefore the claims in their previous form are fully in accordance with Section 112. At **worst**, the criticized language in its previous form might be considered objection, but **only** as to form, requiring no substantial amendments relating to patentability.

Nevertheless, in deference to the examiner's views and to avoid or minimize needless argument, a number of cosmetic amendments have been made above. These amendments are of a formal nature only, i.e. made to place the claim in improved form for U.S. practice. Such amendments are not "narrowing" amendments because the scope of the claims has not been reduced. No limitations have been added and none are intended.

As regards the first point raised, applicant respectfully submits that the claims never called for an interior wall being removable from the interior of the container neck.

As pointed out above, applicant believes and respectfully submits that the horizontal wall was previously set forth as part of the container.

Applicant respectfully disagrees that the phrase "with a tube and cap" does not positively indicate that the tubular container with a tamper-proof device comprises a tube and cap. The word "with", in applicant's view, means that it is part of the structure claimed.

Applicant also respectfully disagrees that there is no structure set forth for the "tamper-proof" feature. A combination of elements of the claimed subject matter provides a tamper-proof feature, including elements (14), (15) and (27). The hole (24) of the cap (2) can be opened or closed by turning the cap (2). When switching from opened to closed, and vice versa, the flexible tongue (15) first reaching, then being stopped by, and finally overcoming the fixed ledge (24), will produce a clicking sound. This will guide the user when opening or closing the cap. If the user continues to turn the cap in the opening direction, the flexible tongue (15) will eventually run into the rigid wall (27), and the cap (2) will not be able to continue turning.

However, these details are not essential to claim 5 which only requires the cap (2) to be tamper-proof. Claim 5 nevertheless recites, and previously recited, the flexible tongue (15 in the illustrated embodiments) and the fixed ledge (element 14 in the illustrated embodiments). An appropriate introductory clause has been inserted at the beginning of the

last paragraph of claim 5 in deference to the examiner's views.

Lastly, applicant respectfully disagrees that the location of the flexible tongue is not set forth. The last paragraph of claim 5 previously recited (and still does) that the flexible tongue is on the interior of the cap in such a location as to make contact with the fixed ledge on the tube.

As indicated above, in spite of applicant's disagreement with the points raised in the rejection, applicant has nevertheless made a number of cosmetic amendments to improve the form of the claim for U.S. practice. Withdrawal of the rejection is in order and is respectfully requested.

None of the claims have been finally rejected on the basis of any prior art, and paragraph 5 on page 3 of the final action indicates that claims 2-5 avoid the prior art and "appear to be allowable... ." Applicant understands that applicant's claims are deemed by the Patent and Trademark Office to define novel and unobvious subject matter under Sections 102 and 103, and applicant further believes that the claims meet all other requirements for patentability.

Applicant believes that all issues raised in the final action have been addressed above in a way which should

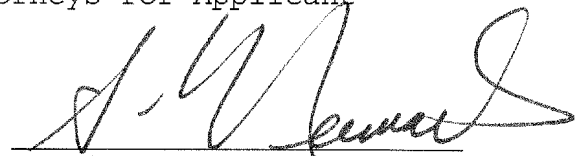
lead to early formal allowance of the present application.

Such is respectfully requested.

Respectfully submitted,

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By

A handwritten signature in black ink, appearing to read 'S. Neimark', written over a horizontal line.

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